Majlis Peguam Malaysia v Murali Achan a/l PE Achan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(A)-505–03 OF 2022
KAMALUDIN MD SAID, HASHIM HAMZAH AND CHOO KAH SING JJCA
13 OCTOBER 2023

Legal Profession — Professional discipline — Restoration of name to Roll of Advocates and Solicitors ('Roll') — Respondent applied for restoration to Roll after four and half years being struck off by Disciplinary Board — High Court allowed respondent's application — Whether lapse of time between striking off from Roll and application was too short — Whether respondent could satisfy court that post disbarment he was remorseful, had repented and had been rehabilitated before filing of motion — Legal Profession Act 1967 s 107

In 2012, the respondent who was an advocate and solicitor, took over conduct of a litigation matter at the Shah Alam High Court ('the SAHC suit') from a legal firm. After having taken over the conduct of the matter, the respondent discovered that the SAHC suit had been struck out by the court for non-attendance of parties on a case management date. Without informing the client ('the complainant') about the status of the SAHC suit, the respondent advised the complainant to file a fresh action. The respondent then told the complainant that he had filed a suit on behalf of the complainant at the High Court of Kuala Lumpur ('the purported suit'). The respondent misled the complainant into believing that the respondent was working closely on the purported suit. After several months had passed, there was no substantial development on the purported suit and the complainant pressed for information about the status of the purported suit. The respondent confessed to the complainant that he did not file the purported suit and also revealed that the SAHC suit had been struck out. Displeased with the respondent, the complainant lodged a complaint to the appellant. The disciplinary board ('DB'), established under the Legal Profession Act 1976 ('the LPA'), ordered that the respondent be struck off from the Roll of Advocates and Solicitors of the High Court of Malaya ('the Roll') following the recommendation from the Disciplinary Committee ('DC'). Approximately four and half years later, the respondent filed an originating motion before the High Court seeking to restore his name on the Roll. The learned High Court judge was satisfied that the respondent had regretted committing the misconduct found by the DC and found that the medical report produced by the respondent pertaining to his mental health had corroborated the respondent's guilt and remorse that led him to develop 'major depression'. The learned High Court judge was satisfied that it was fair and reasonable for the name of the respondent to be restored on

the Roll pursuant to s 107 of the LPA and allowed the respondent's application. Hence, this appeal.

Held, dismissing the appeal with no order as to costs:

(1) No fixed time frame should be considered as 'too short' for the purpose of an application made under s 107 of the LPA. It was not necessary to read a time frame into s 107 of the LPA. It depended on the facts on a case to case basis. The consideration of lapse of time was relevant in relation to what the applicant had done during this period of time to rehabilitate himself to become again a fit and proper person to serve the public and the court. The length of time was not the criterion, but rather the quality of the time that the applicant had spent during this period was paramount consideration (see paras 30 & 34–35).

(2) Every statement made by the respondent was construed by the appellant as repugnant, tainted with doubt and insincere. However, the High Court found the respondent had demonstrated the qualities of humility, regret and contriteness in him, and that the respondent had unconditionally accepted the adverse consequences of his irresponsible behaviour. The learned High Court judge reached a fair and reasonable decision for the name of the respondent to be restored to the Roll. The respondent had repented and had rehabilitated his character. The present character of the respondent demonstrated the quality of contrition for his past misdeeds. The respondent ought to be given a second chance. The respondent's change of character, including evidence of repentance, remorse and rehabilitation, supported that it was fair and reasonable for him to be restored to the Roll (see paras 41, 45 & 47–48).

[Bahasa Malaysia summary

Pada 2012, responden yang merupakan peguambela dan peguamcara, mengambil alih pengendalian perkara litigasi di Mahkamah Tinggi Shah Alam ('saman MTSA') daripada satu firma guaman. Selepas mengambil alih pengendalian perkara itu, responden mendapati bahawa saman MTSA telah dibatalkan oleh mahkamah kerana ketidakhadiran pihak pada tarikh pengurusan kes. Tanpa memaklumkan kepada klien ('pengadu') tentang status saman MTSA, responden menasihatkan pengadu untuk memfailkan tindakan baharu. Responden kemudian memberitahu pengadu bahawa dia telah memfailkan saman bagi pihak pengadu di Mahkamah Tinggi Kuala Lumpur ('saman yang dikatakan'). Responden mengelirukan pengadu untuk mempercayai bahawa responden bekerja keras dalam saman yang dikatakan. Selepas beberapa bulan berlalu, tiada perkembangan besar mengenai saman yang dikatakan dan pengadu mendesak untuk mendapatkan maklumat mengenai status saman yang dikatakan itu. Responden mengaku kepada pengadu bahawa dia tidak memfailkan saman yang dikatakan dan juga mendedahkan bahawa saman MTSA telah dibatalkan. Tidak berpuas hati

dengan responden, pengadu telah membuat aduan kepada perayu. Lembaga Tatatertib ('LT'), yang ditubuhkan di bawah Akta Profesion Undang-Undang 1976 ('APU'), memerintahkan supaya responden digugurkan daripada Senarai Daftar Peguambela dan Peguamcara Mahkamah Tinggi Malaya ('Senarai Daftar') berikutan cadangan daripada Jawatankuasa Tatatertib ('JT'). Kira-kira empat setengah tahun kemudian, responden memfailkan usul pemula di hadapan Mahkamah Tinggi untuk mengembalikan namanya dalam Senarai Daftar. Hakim Mahkamah Tinggi yang bijaksana berpuas hati bahawa responden telah menyesal melakukan salah laku yang didapati oleh JT dan mendapati bahawa laporan perubatan yang dikeluarkan oleh responden berkaitan kesihatan mentalnya telah menguatkan rasa bersalah dan penyesalan responden yang menyebabkan dia mengalami 'kemurungan major'. Hakim Mahkamah Tinggi berpuas hati bahawa adalah adil dan munasabah untuk nama responden dikembalikan dalam Senarai Daftar menurut s 107 APU dan membenarkan permohonan responden. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan tanpa perintah kos:

(1) Tiada tempoh masa tetap boleh dianggap sebagai 'terlalu singkat' bagi tujuan permohonan yang dibuat di bawah s 107 APU. Tiada keperluan untuk membaca rangka masa ke dalam s 107 APU. Ia bergantung kepada fakta mengikut keadaan kes. Pertimbangan selang masa adalah relevan berhubung dengan apa yang telah dilakukan oleh pemohon dalam tempoh masa ini untuk memulihkan dirinya untuk menjadi orang yang layak dan sesuai untuk berkhidmat kepada orang ramai dan mahkamah. Tempoh masa bukanlah kriteria, sebaliknya kualiti masa yang telah diluangkan oleh pemohon dalam tempoh ini adalah pertimbangan utama (lihat perenggan 30 & 34–35).

(2) Setiap pernyataan yang dibuat oleh responden telah ditafsirkan oleh perayu sebagai menjijikkan, dicemari keraguan dan tidak ikhlas. Walau bagaimanapun, Mahkamah Tinggi mendapati responden telah menunjukkan sifat merendah diri, menyesal dan penuh sesal dalam dirinya, dan bahawa responden telah menerima tanpa syarat akibat buruk daripada kelakuan tidak bertanggungjawabnya. Hakim Mahkamah Tinggi mencapai keputusan yang adil dan munasabah untuk nama responden dikembalikan kepada Senarai Daftar. Responden telah insaf dan telah memulihkan kelakuannya. Perwatakan masa kini responden menunjukkan kualiti penyesalan atas kesalahan masa lalunya. Responden sepatutnya diberi peluang kedua. Perubahan watak responden, termasuk keterangan keinsafan, penyesalan dan pemulihan, menyokong bahawa adalah adil dan munasabah baginya untuk dikembalikan ke dalam Senarai Daftar (lihat perenggan 41, 45 & 47–48).]

Cases referred to

Majlis Peguam Malaysia v Krishnasamy a/l Bhaktavatsalu [2020] 12 MLJ 438; [2020] 9 CLJ 613, CA (refd)

Teoh Hooi Leong v Bar Council, Malaysia [1991] 2 MLJ 190; [1991] 1 CLJ Rep 451, SC (refd)

Thavananthan a/l Balasubramaniam v Majlis Peguam Negara [2010] 3 MLJ 316; [2009] 6 CLJ 217, FC (refd)

Majlis Peguam Malaysia v Ahmad Rushdi bin Omar [2017] 6 MLJ 70; [2017] 9 CLJ 413, CA (distd)

Legislation referred to

Legal Profession Act 1976 ss 15, 16(2), 94(2), (2)(b), 100(1)(a), (3)(a), (7), (8), (15), 103D, 103E, 103EA(6), 107, 107(3)

Appeal from: *Murali Achan a/p PE Achan v Majlis Peguam Negara* [2022] MLJU 2243 (High Court, Kuala Lumpur)

Farez Jinnah (Farez Jinnah) for the appellant.
The respondent acted in person.

Choo Kah Sing JCA:

INTRODUCTION

[1] On 19 June 2015, the disciplinary board ('DB'), established under the Legal Profession Act 1976 ('the LPA'), ordered that the respondent, Murali Achan, be struck off from the Roll of Advocates and Solicitors of the High Court of Malaya. The order stated that the striking off will take effect after 21 days it was made. The respondent accepted the decision, he did not appeal.

[2] On 22 January 2020, approximately four and half years later, the respondent filed an originating motion before the High Court in Kuala Lumpur. The respondent sought for an order of the court to restore his name on the Roll of Advocates and Solicitors.

[3] Initially, the respondent named the appellant as the first respondent and the DB as the second respondent in the originating motion. On 20 February 2020, an order was granted to withdraw the DB as the second respondent in the motion.

[4] On 2 March 2020, the High Court allowed the respondent's application, The learned High Court judge was satisfied that it was fair and reasonable for the name of the respondent to be restored on the Roll of Advocates and Solicitors pursuant to s 107 of the LPA. Dissatisfied with the decision of the

High Court, the appellant filed an appeal before us.

THE SALIENT FACTS LEADING TO THE APPELLANT BEING STRUCK OFF THE ROLL

[5] Sometime in 2012, the respondent took over conduct of a litigation matter at the Shah Alam High Court ('the SAHC suit') from a legal firm. The lawyer in charge of the previous legal firm was the respondent's brother, a sole proprietor of the firm, who ceased practice thereafter.

[6] After having taken over the conduct of the matter, the respondent discovered that the SAHC suit had been struck out by the court for non-attendance of parties on a case management date. The client, who was the complainant ('the complainant') in the disciplinary action, was not told of the status of the SAHC suit.

[7] Without informing the complainant about the status of the SAHC suit, the respondent advised the complainant to file a fresh action at the High Court of Kuala Lumpur. The respondent then told the complainant that he had filed a suit on behalf of the complainant at the High Court of Kuala Lumpur under Suit No 22NCVC-1008–12 of 2012 ('the purported suit'). In actual fact, the respondent did not file the purported suit. The respondent continued to conceal from the complainant the fact that the complainant's SAHC suit had been struck out.

[8] The respondent misled the complainant into believing that the respondent was working closely on the purported suit. After several months had passed, there was no substantial development of the purported suit. The complainant pressed for information about the status of the purported suit.

[9] Based on the respondent's narrative, on 19 July 2013, he confessed to the complainant that he did not file the purported suit. The respondent also revealed to the complainant that the SAHC suit had been struck off. The complainant was displeased with the respondent. He then lodged a complaint to the appellant. However, the complainant's letter to the Complaints Secretariat dated 23 August 2013 stated that the complainant was the one who found out that the respondent did not file the purported suit at the High Court of Kuala Lumpur and that the SAHC suit was struck out. The complainant also stated that he found out the status of the cases through file searches conducted at the respective courts.

[10] The respondent averred in his affidavit that his brother told him that he had misplaced the file while under his care. In order to conceal this fact and to buy time for his brother to locate the complainant's file, the respondent took it

upon himself to mislead the complainant. Eventually, the respondent's brother managed to locate the file and gave it to the respondent. By that time, it was too late as the complainant already found out about the truth. The respondent could not salvage the damage.

[11] The respondent did not attend the Disciplinary Committee's hearings, neither did he defend the charge levelled against him. Below are the findings of the Disciplinary Committee ('DC'):

> (i) the respondent had committed grave impropriety and serious misconduct in failing to file the legal action in court on behalf of the complainant as such failure had seriously undermined the interests of the complainant. Such failure amounts to a serious dereliction of his duty to act with due care and in good faith as solicitor to his client;
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> (ii) the respondent had practiced deception and fraud against the complainant by knowingly and fraudulently misrepresenting to the complainant that the legal action had been filed at the Kuala Lumpur High Court bearing Court Case No: 22NCVC-1008-12/2012 when in fact, that was not true and it was known or ought reasonably to be known to the respondent that it was not true. The evidence of the complainant's witnesses on this aspect of the case is corroborated by the following documentary evidence:-
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> ...
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> (iii) the respondent had also committed fraud when he sent an email dated 11.1.2013 to the complainant enclosing an undated letter purportedly from the Kuala Lumpur High Court bearing the Court Case No: 22NCVC-1008-12/2012 when such case number did not exist and was never registered with the Kuala Lumpur High Court;
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> (iv) the respondent had again committed fraud when he issued a letter dated 4.2.2013 purportedly to the Senior Assistant Registrar of the Kuala Lumpur High Court bearing the same nonexistent Court Case No: 22NCVC-1008-12/2012; and
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> (v) there was no remorse shown by the respondent when he was confronted with such deception and fraud by CW-2.

[12] The DC recommended to the DB that the respondent be struck off the Roll as punishment for his misconduct.

THE DECISION OF THE HIGH COURT

[13] The High Court found in favour of the respondent's motion on three main grounds. Firstly, the learned High Court judge was satisfied that the respondent had regretted committing the misconduct found by the DC. Based on the respondent's affidavits, the learned High Court judge was satisfied that the respondent was remorse and penitent. The learned High Court judge

considered that the respondent regretted his actions after his misdeeds were exposed and had advised the complainant to file another action through another lawyer.

[14] Secondly, the learned High Court judge found the medical report produced by the respondent pertaining to his mental health had corroborated the respondent's guilt and remorse that led him to develop 'major depression'. The respondent's mental condition was so serious that he was at one point suicidal, the medical report stated.

[15] The appellant contended that the respondent intended to use the medical report to show his mental health condition to dissociate himself from the misconduct, therefore, it demonstrated that the respondent lacked pertinence and repentance. The learned High Court judge rejected the appellant's contention. The learned High Court was right to reject the contention. Based on the medical report, the respondent was diagnosed as suffering from depression in 2016, and since then he has been prescribed with escitalopram (10mg daily) to treat his depression. In the medical report, it was stated that the respondent developed major depression 'as a result of the guilt and remorse he felt as a consequence of his conduct leading to his disbarment in 2015'. This clearly shows the respondent developed a mental problem after he was disbarred. His remorse led him to mental depression. The respondent did not hide behind his mental problem for his misdeeds. Hence, the appellant's contention that the respondent wanted to dissociate his misconduct by the reason of his mental health was not sustainable.

[16] Thirdly, the appellant contended that a letter from one Encik Luqman Kamil dated 21 July 2020 produced by the respondent was an attempt to improve his motion and was an afterthought. The said letter was produced after the secretary's report was produced by the appellant. The High Court disagreed. The said letter is a commendation of the respondent's character after his disbarment which could support the respondent's application and assist the court to evaluate the motion. Likewise, there were two other letters produced before the High Court, namely, one from a senior and respectable lawyer Malik Imtiaz Sarwar, and the other one from Vijendran Ponniah, a former member of the Bar, to 'support' the respondent's motion. These letters are useful to assist the court to come to an informed decision.

[17] The learned High Court judge considered the evidence before her. Her Ladyship had carefully evaluated the circumstances of the case. Her Ladyship was satisfied and thought it fair and reasonable to restore the name of the respondent to the Roll of Advocates and Solicitors.

A THE FINDINGS OF THIS COURT

The test and considerations

B **[18]** 'Fair and reasonable' has always been the litmus test to determine whether a disbarred member of the Malaysian Bar ought to be restored to the Roll of Advocates and Solicitors. It is hard to draw a fine line what may or may not constitute as fair and reasonable. It really depends on the facts of each case. The apex court has decided that 'fair' (or fairness) must be examined from the perspective of and accorded to the members of the public, the legal profession and colleagues in the profession, to the court and to the applicant (the disbarred member) when considering an application made under s 107 of the LPA (see oft-quote Supreme Court decision in *Teoh Hooi Leong v Bar Council, Malaysia* [1991] 2 MLJ 190; [1991] 1 CLJ Rep 451). The apex court also held that the decision must be a reasonable decision and such decision must be supported by cogent evidence.

[19] In the past, an application made under s 107 of the LPA was heard before a panel of three High Court judges (see Legal Profession (Amendment) Act 1983 (Act 567), s 51, in force from 16 December 1983). The requirement of three High Court judges sitting to hear such application was then substituted to a single High Court judge sitting alone (see Legal Profession (Amendment) Act 2012 (Act A1444), s 20, in force from 3 June 2014 (PU(B) 262/2014)). There was and still is available a right to appeal against a High Court decision to the Court of Appeal, and thereafter to the Federal Court.

[20] It is a daunting task for a single judge to decide on the fate of an applicant under s 107 of the LPA. On one hand, the judge has to consider the interests of the public, members of the profession and the court so as to ensure that utmost protection be given. On the other hand, the judge has to ensure that the contrition, a second chance and livelihood of the applicant would be given a fair evaluation. In order to strike a balance between the two, and to come to a fair and reasonable decision to restore the applicant, as required by the law, it is necessary to consider some of the factors, whichever is applicable, below:

(a) the lapse of time between striking off from the Roll and the application;

(b) the change of character — including evidence of repentance, remorse and rehabilitation that could rise up to worthiness of restoration to the Roll;

(c) supporting testimonies from third parties (if any); and

(d) restitution (if any).

The above considerations are not exhaustive.

The Bar Council's role

[21] The Bar Council, or the appellant here, is to assist the court to carry out the daunting task. One part of s 107(3) of the LPA reads as follows:

> ... the Bar Council ... shall place before the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the Roll and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the Roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be investigated in connection with the application.

[22] The above sub-section spells out the role of the Bar Council in an application made under s 107 of the LPA. Based on the above, the court will be furnished with copies of the note of proceedings in the Disciplinary Committee's hearings, the Disciplinary Committee's report by the Bar Council, and more importantly 'a statement of facts' which have occurred since the applicant concerned was struck off from the Roll which the Bar Council is of opinion are relevant to be considered or to be investigated in connection with the application.

[23] The Bar Council's only role here is to provide the court with information. There is no provision for the Bar Council to oppose the application. The Bar Council is made a party to the application to enable it to provide valuable information to the court. The information provided by the Bar Council will aid the court in making a fair and reasonable decision whether to restore the name of the applicant to the Roll or not. The Bar Council is not here to defend the DB's decision. As far as the DB's decision is concerned, it is water under the bridge for purposes of s 107 of the LPA.

[24] A notice of motion made under s 107 of the LPA is distinct from an application made under s 103E of the LPA. In the latter, the role of the Bar Council, if it decides to intervene, is to defend the DB's order or decision made under ss 94(2), 100(1)(a), 3(a), 100(7), (8) or (15), or 103D (see also s 103EA(6)). Whereas, in the former, the Bar Council's role is limited, because the Bar Council is required only to provide facts which in its opinion are relevant to be considered or to be investigated by the court for the application.

[25] The Bar Council is allowed to raise an objection to a petition filed under s 15 of the LPA (see s 16(2) of the LPA), but not to an application made under s 107 of the LPA.

[26] This court notes that the appellant, instead of assisting the court, had vigorously objected to the respondent's application. The court appreciates the appellant's opinion for the case, but not its confrontational stance. The confrontation stance taken by the appellant for the motion filed under s 107 of the LPA is frowned upon by this court.

The lapse of time

[27] In relation to the factors for consideration of the court for purposes of s 107 of the LPA as identified in this judgment, one consideration is the lapse of time between the striking off from the Roll and the application.

[28] The respondent was admitted as an advocate and solicitor of the High Court of Malaya on 7 September 1990. On 19 June 2015, the respondent was struck off the Roll of Advocates and Solicitors (effective after 21 days from the date the order was made) by the DB exercising its power conferred by s 103D of the LPA. On 22 January 2020, the respondent filed the notice of motion pursuant to s 107 of the LPA. The lapse of time between the striking off from the Roll and the application is approximately four and half years.

[29] The Bar Council's Report dated 3 July 2020 has referred to the Court of Appeal case of *Majlis Peguam Malaysia v Ahmad Rushdi bin Omar* [2017] 6 MLJ 70; [2017] 9 CLJ 413. Likewise, the appellant's counsel before us also referred us to the same case. In that case, the Court of Appeal decided that a lapse of four years between the time the order was made and the time an application was made for restoration under s 107 of the LPA was 'too short'. The appellant's counsel urged this court to follow *Ahmad Rushdi* to hold that the lapse of time for the respondent's application was too short.

[30] This court takes the position that no fixed time frame should be considered as 'too short' for the purpose of an application made under s 107 of the LPA. This court refers to the decision of our apex court in *Thavananthan a/l Balasubramaniam v Majlis Peguam Negara* [2010] 3 MLJ 316 at p 324; [2009] 6 CLJ 217 at p 226 (FC) wherein it was held that 'each case must be considered on its own special factual circumstances bearing in mind there is no time frame stipulated under s 107 of the LPA before a disbarred member can be restored to the Roll'.

[31] In *Ahmad Rusdi,* the Court of Appeal was fully aware of the proposition in the apex court's decision in *Thavananthan*. The Court of Appeal felt, based on the facts of that case, four years was too short. The Court of Appeal found it repugnant that the plaintiff (the applicant there) attempted to use the restoration application proceedings to impugn the findings of the DC. The Court of Appeal could not find any evidence of remorse showed by the

plaintiff. The Court of Appeal also could not find any evidence that the plaintiff had rehabilitated himself. The Court of Appeal even went on to say as follows:

> [30] From the tone of the language in the plaintiff's affidavit in reply to the defendant's affidavit in reply, the plaintiff became completely, defensive and disclosed a propensity to justify his misconduct. This showed the plaintiff was not penitent at all. Therefore, the plaintiff clearly had failed to discharge the burden of proving penitence which the law placed on him.

[32] The remark of 'four years is too short a time' in *Ahmad Rusdi* must be understood within the context of the case. The Court of Appeal stated that:

> [41] ... we however feel based on the facts before us, four years is too short a time for the plaintiff to be reinstated to the profession after committing a serious misconduct as illustrated herein.

[33] Hence, *Ahmad Rusdi* does not lay down a legal proposition that any application made under s 107 of the LPA could not be considered if it is made less than four years between the time of disbarment and the time the application is made, because the lapse of time is too short.

[34] An advocate and solicitor who is suspended for committing any misconduct may be suspended from practice for any period not exceeding five years (see s 94(2)(b) of the LPA). A maximum time frame is fixed for the suspension. Unlike s 94(2)(b) of the LPA, there is no time frame provided under s 107 of the LPA. We are of the view that it is not necessary to read a time frame into s 107 of the LPA. It depends on the facts on a case to case basis.

[35] This court is of the view that the consideration of lapse of time is relevant in relation to what the applicant has done during this period of time to rehabilitate himself to become again a fit and proper person to serve the public and the court. The length of time is not the criterion, but rather the quality of the time that the applicant had spent during this period is paramount consideration. The burden is on the applicant to show how his character has changed after spending his time wisely to rehabilitate himself.

[36] Every person has a different quality and character. Some will take longer time and some will take shorter time to change. Some will never change, like a leopard cannot change its spots. Perhaps Parliament had this in mind and in its wisdom did not impose any specific time frame when a disbarred member may apply to restore his name to the Roll of Advocates and Solicitors. The burden lies with the applicant to satisfy he has changed, and it is for the court to decide if it is fair and reasonable to restore his name to the Roll of Advocates and

Solicitors. It is important for the court to evaluate the facts before it in order to determine the question whether the character of the respondent has truly changed.

Change of character — Remorse, repentance and rehabilitation

[37] We are of the view that the most important consideration is whether the respondent could satisfy the court that post disbarment he was remorseful, has repented and has been rehabilitated before the filing of the motion.

[38] The respondent unconditionally admitted his misdeeds in his affidavit. He explained that he was 'too ashamed to face' the DC. For that reason, he did not attend the hearing(s). The respondent accepted the punishment meted out against him without protest. The respondent stated, 'I deeply regret what I had done [sic]. I am repentant and penitent'. There is no evidence before the court that he was recalcitrant towards the DC's and DB's decisions.

[39] The respondent tried to explain in his affidavit the predicament he was facing at that time which had led him to commit the misconduct. The respondent qualified that he was not trying to defend nor challenge the findings of the DC while explaining what had happened. It is just and fair for the respondent to explain his predicament at the material time to the court. The respondent's explanation should not be taken as the respondent 'continues to perpetuate and allow sentiment to override his express and statutory duty as an officer of court, and more importantly, to his client', as submitted by the appellant's counsel. The respondent was not distancing himself from his wrongs. He took full responsibility for his actions. It is appalling for the appellant's counsel to cast the respondent's explanation in a bad light.

[40] The appellant's counsel took offence to every piece of information provided by the respondent in his application. The appellant's counsel submitted that:

(a) the respondent's application was 'selfish and self motivated';

(b) he was not remorseful because he has a 'prideful nature of his record as an advocate and solicitor prior to his disbarment';

(c) the respondent tried to 'downplay his misconduct by stating that the complainant had already obtained judgment in his favour' because of his advice given to the complainant;

(d) the respondent attempted to dispute the statements made by the witness during the DC's hearing;

(e) the respondent failed to realise he has no right to practise as an advocate and solicitor, it is a privilege afforded by legislation;

(f) the court should not be persuaded that the respondent was struggling to make ends meet, and that the respondent could seek employment in other fields;

(g) the respondent did not disclose he was working (or named) as a director in a company when making the application. The respondent did not come before the court with full and frank disclosure. Hence, 'because of the non-disclosure set out herein, which go to show the respondent is not entirely of fully rehabilitated';

(h) all the remarks made by the respondent 'are merely exculpatory and an afterthought, as no evidence to the extent of demonstrating he had repented was tendered';

(i) there is no evidence tendered by the respondent to show that he is repentant and that he led a blameless life;

(j) the respondent did not show he has been keeping abreast with the law during his period of disbarment;

(k) the purported testimonials provided by the respondent are but merely afterthought and carry no weight to demonstrate the respondent's rehabilitation; and

(l) the respondent is unable to demonstrate any change of character, penitence, rehabilitation nor restitution made by the respondent; and etcetera.

[41] Every statement made by the respondent was construed by the appellant as repugnant, tainted with doubt and insincere. However, the High Court found the respondent had demonstrated the qualities of humility, regret and contriteness in him, and that the respondent had unconditionally accepted the adverse consequences of his irresponsible behavior. We think the learned High Court judge was entitled to reach this conclusion based on Her Ladyship's consideration of the evidence before the court.

[42] Sometimes an event can be construed in many ways. As the saying goes there is always 'two sides to the same coin', it depends on how one perceives it. The appellant perceived the statements as not sincere, while the respondent perceived the statements as merely telling his side of the story and as seeking for mercy and forgiveness. The learned High Court judge accepted the respondent's narrative, and gave the respondent a second chance. In *Majlis Peguam Malaysia v Krishnasamy a/l Bhaktavatsalu* [2020] 12 MLJ 438 at p 445; [2020] 9 CLJ 613 at p 619 (CA), Justice Lee Swee Seng JCA has this to say:

> [11] The fact that there is such a provision for restoration after having been struck off would suggest that in deserving cases where the lawyer has been fully

> rehabilitated, bearing fruits of repentance and making full restitution, he should be extended grace and be given a second chance ...

[43] The learned High Court judge's mercy was not only influenced by the strong concession of guilt made by the respondent, Her Ladyship also considered the fact that the respondent had rehabilitated himself and changed his character. The learned High Court judge had considered the medical report and the three letters produced by the respondent as mentioned earlier. The learned High Court judge stated as follows:

> [26] ... It can be garnered from the letter of Encik Luqman Kamil that from as early as 2016 the applicant was already given tasks to perform matters relating to the company's business and the applicant was then invited to become the director of the company as Encik Luqman Kamil has stated that he was pleased with the applicant's work. This evidence is pertinent and relevant as it shows that after being struck off from the Roll, the applicant was still involved with legal matters since his task as a director in the company was to advise the company on matters pertaining to the law.

[44] After much consideration of the objections and contentions raised by the appellant, the learned High Court judge was not convinced that the appellant had produced before the court any facts (by way of supplemental report) to contradict the respondent's evidence post striking off. Her Ladyship also could not find the appellant had shown any relevant facts or information that the respondent was not fit and proper person to be readmitted to the Roll.

[45] After having examined the High Court judge's reasoning in coming to her decision, and after having heard and read the oral and written submissions by the appellant's counsel and the respondent, we are convinced that the learned High Court judge reached a fair and reasonable decision for the name of the respondent to be restored to the Roll of the Advocates and Solicitors.

Summary

[46] The views of the appellant have been considered by the learned High Court judge, and likewise, by us. We have perused the evidence produced by the respondent and have considered the evaluation of the evidence carried out by the learned High Court judge.

[47] We are satisfied that the learned High Court judge has correctly decided that it was fair and reasonable to restore the respondent to the Roll. We are also satisfied that the respondent has repented and has rehabilitated his character. The present character of the respondent demonstrates the quality of contrition for his past misdeeds. He is sincere to uphold moral judgment vis a vis to be honest and truthful to the public, members of the profession and to the court in future — this is the quality of rehabilitation.

[48] After considering the interests of the public, members of the profession, more importantly, the interest of the court, and also taking into consideration and weighing all the evidence before us, we are of the view that the respondent ought to be given a second chance. We are convinced that the respondent's change of character, including evidence of repentance, remorse and rehabilitation, support that it is fair and reasonable for him to be restored to the Roll of Advocates and Solicitors.

CONCLUSION

[49] For the above reasons, we find there is no appealable error committed by the learned High Court judge that could warrant us to disturb Her Ladyship's findings and decision. Hence, in a unanimous decision, the appeal is dismissed with no order as to costs.

Appeal dismissed with no order as to costs.

Reported by Ahmad Ismail